

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ESTATE OF OSCAR DAVID)	
VENTURA GONZALEZ,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 22-11869-LTS
)	
CITY OF EVERETT,)	
EVERETT POLICE DEPARTMENT,)	
and ALEX VIERA,)	
)	
Defendants.)	
_____)	

SECOND ORDER ON THE MOTION TO DISMISS (DOC. NO. 4)

May 25, 2023

SOROKIN, J.

Previously, the Court directed Plaintiff to explain whether she would have standing if appointed administrator nunc pro tunc. Doc. No. 13. Plaintiff and Defendants have filed further briefs in response to that direction. Doc. Nos. 14, 15. The Supreme Judicial Court has “reject[ed] ... the argument [that] a wrongful death action may properly be brought by [an] estate.” Est. of Gavin v. Tewksbury State Hosp., 9 N.E.3d 299, 309 (Mass. 2014). That said, if Alma Rodriguez is appointed administrator of the Estate, she could move to substitute herself as the Plaintiff in lieu of the Estate as Plaintiff. Because such a motion is premature, the Court takes no view on it. The Court also raised the question of whether Ms. Rodriguez would have standing to pursue this action if appointed nunc pro tunc. On reflection, because that question is not yet ripe, the Court declines to resolve it, as federal courts do not resolve hypothetical questions. In re Financial Oversight and Management Board for Puerto Rico, 916 F.3d 98, 111 (1st Cir. 2019).

Accordingly, the Court (1) DENIES WITHOUT PREJUDICE the Motion to Dismiss, and (2) in light of the Supreme Judicial Court's decision permitting an estate to take steps prerequisite to advancing a wrongful death action, albeit in a different context; Est. of Gavin, 468 Mass. at 309; the Court STAYS the pending action pending resolution of the motion for appointment of a conservator. Plaintiff shall file a status report at the earlier of sixty days from the date of this Order or seven days from the resolution of action by the Probate Court. If upon the filing of the status report, relevant matters remain pending in the Probate Court, Plaintiff shall include in that status report the name of the Probate Court Judge before whom the relevant matters are pending. Nothing in this Order resolves the challenges to the Complaint advanced by the Defendants nor precludes the Defendants from raising those or any other challenges to the Complaint.

SO ORDERED.

/s/ Leo T. Sorokin
Leo T. Sorokin
United States District Judge